HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

CLR. No. 125 of 2001

Chandan Singh Ginwal

Vs.

Badri Dutt Joshi

Approved for reporting.

_____

~~Not approved for reporting~~

Date of decision 19.8.2004

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL.
CIVIL REVISION NO.125 OF 2001.
(OLD NO. 369 OF 1999)

Chandan Singh Ginwal. ……. Applicant.

Versus.

Badri Dutt Joshi. ,,,,,, Opp.party.

Sri V.K.Bisht, Senior Advocate assisted by Sri Amrish Chaterji, counsel for the applicant.
Sri P.C.Maulikhi, counsel for the Opp.party.

HON'BLE RAJESH TANDON, J.

By the present revision the applicant has prayed for setting aside the order dated 28.8.1999 by which the suit of the plaintiff has been dismissed.

Briefly stated, a suit was filed by the plaintiff for ejectment on the ground that he is owner and landlord of the building known as Glemco Outhouse Mallital, Nainital. In one of the rooms of this Outhouse located at ground floor the defendant is the tenant at the monthly rent of Rs.600/-. According to the case of the plaintiff-applicant he purchased the building on 27.07.1991 and on the request of the defendant the same was given on the monthly rent of Rs.600/- to the defendant. In the last week of November, 1991 Rs.600/- was settled since December, 1991. The plaintiff has submitted that not even a single penny towards rent was paid by the defendant and alleged that the rent was Rs.150/- per annum. The defendant has also filed a suit restraining the plaintiff from evicting forcibly.

In view of the aforesaid facts, the plaintiff has submitted that a notice under section 106 of the Transfer of Property Act read with section 20(1) of U.P.Act No.13 of 1972 was sent on 17th November, 1993 demanding the rent upto 17th November, 1993 @ 600/- per month to the extent of Rs.13,540/- and the notice was duly served on the defendant but even after the expiry of the period the defendant did not pay any amount towards rent and, as such, the default of the defendant has compelled the plaintiff to file the suit for ejectment as well as for damages @ 20/- per day. Three points for determination were framed by the learned Judge, small Causes Court. Point No.1 was to the effect of striking off the defence. Point No.2 related to the default under section 20(2)(a) of U.P.Act No.13 of 1972 and point no.3 was with regard to the sub letting under section 20(2)(e) of the Act. So far as point no.1 is concerned I have already allowed revision No.344 of 2001 and the order striking off the defence has been set aside and, as such, point no.1 is decided accordingly.

So far as point no.2 with regard to the default under section 20(2)(a) of U.P.Act No.13 of 1972 is concerned the learned J.S.C.C. has recorded a finding that since the tenant has incurred expenses of Rs.4976.63.p. in restoring the electricity and water connection in the tenanted premises, there is no default. D.W.1 Chandan Singh was examined and a perusal of his statement shows that there is noting in his statement that he has invested the said amount to

get the benefit towards the rent. The J.S.C.C. has mentioned that in pursuance of the order passed by thePrescribed Authority the defendant has invested the amount. A perusal of the order dated 27.05.1995 only shows that the same will be made available to the plaintiff and only half of the amount will be borne by both the parties. The J.S.C.C. while giving the benefit has neither recorded any findings with regard to the ingredients contained under section 20(2)(a) of U.P.Act No.13 of 1972. The same is quoted below:

"20(2). A suit for eviction of a rent from a building after the determination of his tenancy may be instituted on one or more of the following grounds, namely;

(a) that the tenant is in arrears of rent for not less than four months, and has failed to pay the same to the landlord within one month from the date of service upon him of a notice of demand."

The J.S.C.C. was required to record a finding as to what has been claimed by the plaintiff in the plaint and thereafter whether the defendant is in arrears for not less than four months and further as to whether the defendant has failed to pay the rent within the period of one month, i.e. the date on which the notice of demand was sent. None of the aforesaid finding has been recorded by the J.S.C.C. while dismissing the suit of the plaintiff. It has been held in Mohd.Siddiqui Vs II Additional District Judge, Unnao and others that whatever protection the Rent Act give they do not give

blanket protection for non-payment of rent. Relying upon the judgment of the Apex Court in the case of Madan Mohan Vs Madan Kumar it has been held in 1997 Vol 2 A.R.C. page 400 Mohd. Siddiqui Vs II Additional District Judge, Unnao and others to the following effect:

"There is yet another aspect which cannot be over looked. The provisions contained in Section 20(2) of the U.P. Urban Buildings (Regulation of Letting Rent and Eviction)Act, 1972 indicate that inspite of the determination of tenancy of a tenant in accordance with the provisions contained in the Transfer of property Act, the tenant is permitted to continue in the accommodation under this tenancy which accommodation is within the purview of the Act in the capacity of a statutory tenant with a bar in regard to seeking his eviction by filing a suit for the purpose but this bar stands lifted once the landlord succeeds in establishing the requirements envisaged under section 20(2)(a) of the Act and satisfied the conditions prescribed thereunder. As observed by the Apex Court, the Rent Control Acts are necessary social measures for protection of tenants. The Rent Control laws, the Hon'ble Supreme Court has emphasized, have tried to balance the equity. Landlord is duty bound to satisfy the ground of eviction mentioned in various Rent Acts and if he does not satisfy he cannot get an order of eviction. But once the ground of eviction specified in the Act is made out, no discretion is left with the authority to refuse the relief of eviction sought for.

As pointed out be the Apex court in its decision in the case of Madan Mohan and another Vs Mohan Kumar Sood, reported in 1993(1) JT 162: 1993 SCFBRC 133 (SC), whatever protection the Rent Acts give they do not give blanket protection for non payment of rent. This basic minimum has to be complied with by the tenants. The Rent Acts do not contemplate that if one takes a house on rent he can continue to enjoy the same without payment of rent.

In the aforesaid view of the matter, the petitioner once having been informed that he had fallen in arrears in regard to payment to rent for more that the requisite period, was duly bound to clear the arrears if any by tendering the same to the landlord or deposit the same in Court as provided under the Act, if he wanted the protection of the Act. He could not just ignore the notice on the ground that it contained an inflated demand and on that ground continue to enjoy the accommodation let out to him without payment of rent, It may be observed that once after receiving the notice informing the tenant that he has been defaulting in the payment of rent for the prescribed period and he may be evicted, the tenant in order to save his default, if there by any, must pay the rent due according to him, to the landlord or deposit the same in accordance with the provisions of the Act otherwise he has to face the consequences. This it seems to me is the underlying policy of the Act and amply safeguards the interest of

both the land lord and the tenant, maintaining a just balance between their competing interests."

The J.S.C.C. has not even decided the rate of rent according to the case of the plaintiff as the plaintiff has demanded a sum of Rs.600/- per month whereas according to the case of the defendant the same is Rs 150/- per annum, the discrepancy in the payment of rent has to be resolved by the evidence on record by framing the point for determination in respect thereof.

In view of the aforesaid facts I find merit in the revision and the same is allowed. The order passed by the J.S.C.C. dated 28.08.1999 is set aside. The case is sent back to the J.S.C.C. for recording a categorical finding on the basis of the entire pleadings of the parties.

(Hon'ble Rajesh Tandon, J.)

Dated: August 19, 2004.
S.S.Negi.